In addition to an election of Group 1 or 2, the Examiner has further required that Applicant elect a single disclosed species.

The Examiner has concluded that restriction for examination purposes is proper because these inventions are allegedly independent and distinct for reasons given on pages 2 and 3 of the Office action.

Applicants respectfully request reconsideration and withdrawal of the restriction requirement. It is submitted that the restriction pursuant to 35 U.S.C. § 121 is unwarranted under the circumstances. There is ample justification to keep all of the pending claims and subject matter in this single application.

There is unity of invention that can be seen through the sole basis of the whole invention, namely, the novel combination use of a bioresponse modifier and a chemotherapeutic agent, alone or in a regimen therapy of more than one chemotherapeutic agent, either for treating solid tumors or potentiating the activity of the chemotherapy. If the Examiner believes that Claims 1-7 and 8-14 are distinctly situated in classes 514 and 544, respectively, it is submitted that, on closer examination, the Examiner will need to search both classes in every instance because the recited elements to Groups I and II are substantially the same. To be thorough, both groups will require a search of the art involving drugs, bio-affecting and body treating compositions in class 514. Similarly, both groups will require a search of the art involving organic compounds in class 544. The scope of the two searches will ultimately be the same and the Examiner will replicate his efforts. Thus, Applicants urge the Examiner to withdraw the requirement to restrict this application to a single group.

If the restriction to a single species combination is upheld, traversal to retain the right to petition is founded upon equitable considerations. The restriction requirement of a single species would effectively deny Applicants their substantive right to decide what they regard as their invention. The Examiner would need to search an overwhelming number of groups within the same classification in repetitive efforts and Applicants would be forced to file numerous applications at great time and expense. The Examiner is therefore urged to withdraw the requirement to restrict this application to a single species.

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Consistent with the foregoing remarks and in accordance with the requirement of 37 C.F.R. § 1.143, Applicants provisionally elect with traverse to prosecute the invention of Group I, Claims 1-7, drawn to a method of treating solid tumor in a mammal, and further provisionally elect with traverse the species of Claim 6, drawn to the combination of [R-(R*,R*)]-N-[-(R)-6-carboxy-N^2-[[2-carboxy-1-methyl-2-[(1-oxoheptyl)amino]ethoxy]carbonyl]-L-lysyl]-alanine or a pharmaceutically acceptable salt thereof and paclitaxcel. Applicants currently retain the nonelected subject matter to afford the Examiner the opportunity to reconsider the restriction requirement and, thus, for future consideration on the merits. It is to be understood that the provisional election is for procedural purposes only and that Applicants reserve the right to file a divisional application directed to the nonelected subject matter of this invention or a petition to modify the restriction requirement in the event that the restriction requirement is upheld.

Favorable treatment is respectfully solicited.

CORRECTION OF ATTORNEY DOCKET NUMBER

It is requested that the Office kindly correct the Attorney docket number on future correspondence. The docket number should read --AM100081 01--.

Thank you for your attention to this matter.

Respectfully submitted,

WYETH

Date: May 12, 2003

By: Anne M Rosenblum
Anne M. Rosenblum
Attorney for Applicants
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FILING BY EXPRESS MAIL UNDER 37 C.F.R. § 1.10

This correspondence is being deposited with the U.S. Postal Service on May 12, 2003 to be delivered by the "Express Mail Post Office to Addressee" service under Mailing Label Number EU730403078US addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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APPENDIX

AMENDMENTS TO THE SPECIFICATION

On page 1, lines 6-8, please substitute the following paragraph for the original paragraph:

A1

This application claims the benefit of U.S. Provisional Application No. 60/240,944, which was converted from U.S. Patent Application No. 09/396,051, filed September 15, 1999, pursuant to a petition filed under 37 C.F.R. § 1.53 (c)(2)(i).